

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 187

Health Insurance--Certified Surgical First Assistants

**SPONSOR(S):** Homan

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 594

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee		Mitchell	Mitchell
2) Insurance Committee			
3) Health & Families Council			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

In order to equalize reimbursement of physician extenders in operating rooms, and encourage an increasing supply of skilled surgical assistants, HB 187 adds certified surgical assistants to those insurance policies are required to reimburse.

Currently, s. 627.419(6), F.S., of the Florida Insurance Code only requires insurance policies to reimburse especially trained registered nurses and physician assistants who assist physicians in surgeries, or their employers. The bill requires any insurance policy, health care services plan, or contract that provides for payment for surgical first assisting, to reimburse certified surgical assistants for such services, when they serve as a substitute for an assisting physician who would be reimbursed by the plan.

Typically, surgical teams consist of the surgeon in charge; a surgical assistant (another physician or specially trained nurse or physician assistant); the anesthesiologist; the circulator (who oversees the operating room situation) and the scrub (who prepares the sterile field). Currently certified surgical first assistants serve on surgical teams in several of these roles. The bill requires that when they serve as surgical assistants in place of a physician licensed under chapters 458 or 459, they or their employers must be reimbursed separately.

The bill defines "certified surgical assistant" as not licensed. It requires them to be directly accountable to a physician licensed under chapter 458 or 459, or a registered nurse licensed under chapter 464, and to be certified by either the:

- National Surgical Assistant Association on the Certification of Surgical Assistants,
- Liaison Council on Certification of Surgical Technologists, or
- American Board of Surgical Assistants.

Proponents of the bill estimate there are approximately 500 certified surgical assistants providing these services in Florida who will be able to increase services and improve safety in the operating room in the place of assisting physicians.

According to the Office of Insurance Regulation, it is unclear if the direct payment requirement will significantly affect claims loss, as payments for services provided by certified surgical assistants may be currently covered under the general reimbursement for a covered surgical procedure.

The effective date of the bill is July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0187.HCR.doc

**DATE:** 2/11/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The bill broadens government authority by mandating that insurers pay for specific services, thus limiting the insurance companies' freedom in contractual negotiations.

#### B. EFFECT OF PROPOSED CHANGES:

HB 187 expands the requirements of current statute requiring any insurance policy, health care services plan, or contract to pay for surgical assistance in an operation performed by specified professionals in the place of an assisting physician. The bill requires payment to a certified surgical assistant or their employer, when the assistant performs services under a supervising physician as a substitute for an assisting physician (licensed under chapter 458 or chapter 459) who would be reimbursed by the plan or contract.

The bill defines "certified surgical assistant" as an unlicensed health care provider who is certified by one of three national certification associations (the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants). The certified surgical assistant must be directly accountable to a physician (licensed under chapter 458 or 459) or, in the absence of a physician, a registered nurse licensed under chapter 464.

#### CURRENT SITUATION

##### **Existing Statutes:**

Current statute (s. 627.429(6), F.S.) specifies that any health insurance policy, health care services plan, or other contract is to provide for payment to a registered nurse first assistant or employers of a physician assistant or nurse first assistant who provides surgical assistance within the scope of their license. The provision applies only if reimbursement for an assisting physician, licensed under chapter 458 or chapter 459, would be covered, and the physician assistant or registered nurse first assistant is used as a substitute.

Section 624.215, F.S., requires proposals that mandate specific health coverage to submit a report of the social and financial impacts of the proposed coverage to the Agency for Health Care Administration (AHCA) and legislative committees. It provides criteria for the review of the proposed mandate.

Section 395.0197(1)(b) 3., F.S., prohibits unlicensed persons from assisting or participating in any surgical procedure unless the facility has authorized the person to do so following a competency assessment. Assistance or participation must be done under the direct and immediate supervision of a licensed physician and must not be an activity that may only be performed by a licensed health care practitioner.

##### **Wide Range of Professions Assist in Surgeries**

According to a recent U.S. Government Accounting Office (GAO) report regarding Medicare reimbursement for these services<sup>1</sup>, there is a wide range of health professionals who serve as surgical assistants including, physicians, residents in training for licensure or board certification, international medical graduates, nurses, and several unlicensed health professions.

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<sup>1</sup> United States General Accounting Office, January 2004. "Medicare Payment Changes Are Needed for Assistants-at-Surgery." GAO 04-97.

## **Surgical team members include:**

- **The Surgeon:** a physician in charge of the team, the operative procedure, and everything that occurs in the OR during surgery.
- **The Surgical Assistant:** another physician or an Advanced Registered Nurse Practitioner (ARNP) or Physician Assistant who helps the surgeon by holding retractors, tying and clamping blood vessels, and assisting in cutting and suturing tissue.
- **The Anesthesiologist:** a physician or nurse anesthetist who specializes in administering anesthetic drugs to induce and maintain anesthesia during the surgery.
- **The Circulator:** a registered nurse who oversees the OR for the hospital, including responding to the needs of the scrubbed members within the sterile field before, during, and after the surgical procedure.
- **The Scrub:** a registered nurse or other surgical technician who prepares the sterile field, scrubs and gowns the members of the surgical team, and prepares and sterilizes the instruments before and after the surgical procedure.

## **Surgical Assistants**

HB 187 pertains to health professionals who are especially trained, and certified to assist in surgeries. They are not licensed by the State of Florida. According to the U.S. Department of Labor, they practice under the supervision of surgeons, registered nurses, or other surgical personnel and usually perform the role of scrubs. During surgery, these assistants may pass instruments and other sterile supplies to surgeons and surgeon assistants. They may hold retractors, cut sutures, and help count sponges, needles, supplies, and instruments. Assistants help prepare, care for, and dispose of specimens taken for laboratory analysis and help apply dressings. Some operate sterilizers, lights, or suction machines, and help operate diagnostic equipment.

## **Certified Surgical Assistants**

According to the Department of Labor, while there is a wide range of allied health professionals trained as surgical technologists in a variety of programs, most employers prefer to hire certified technologists. Technologists may obtain voluntary professional certification by graduating from an accredited program and passing a national certification examination. To qualify to take the exam, candidates follow one of three paths: complete an accredited training program, undergo a 2-year hospital on-the-job training program, or acquire seven years of experience working in the field.

The three professional organizations that certify surgical assistants are:

- **The American Board of Surgical Assistants**, founded in 1987, administers a national certification examination for surgical assistants. The examination covers all surgical disciplines and areas of preoperative medicine. It evaluates knowledge of surgical anatomy, procedures and techniques, diagnostic studies, emergencies, OSHA regulations and general patient safety.
- **The National Surgical Assistant Association**, which began in Virginia in 1979. It established practice standards and develop a certification examination with the help of the Department of Surgery at Norfolk General Hospital.
- **The Liaison Council on Certification for the Surgical Technologist** was established in 1974 as the certifying agency for surgical technologists. It determines the eligibility for the granting and revocation of certification of surgical technologists and first assistants.

## Medicare Reimbursement of Surgical Assistants

According to the Government Accounting Office (GAO) report,<sup>2</sup> surgical assistants have a wide range of educational training and expertise, and different levels of professional requirements that do not justify the same level of reimbursement by Medicare. Surgical assistants include:

- Licensed Professional Assistants—including physicians, physician assistants, and registered nurses.
- Unlicensed Allied Health Professionals—including surgical technologists, surgical assistants, “scrubs,” and surgical or operating room technicians.

Depending on the procedure performed, and the qualifications and training of the provider assisting in surgery, the services may be separately billable to Medicare. Medicare will reimburse only licensed personnel as assistants at surgery and does not reimburse for certified surgical technologists.

- The personnel that qualify for Medicare reimbursement when performing as an assistant at surgery are a licensed physician, clinical nurse specialist, physician assistant and nurse practitioner, when the primary surgeon requires an assistant, and the surgical procedure meets Medicare's requirements.
- Medicare will not reimburse for surgical assistants such as registered nurse first assistants (RNFAs), orthopedic physician assistants, licensed practical nurses (LPNs), certified surgical technologists (CSTs), or other licensed or non-licensed personnel employed by the physician practice.

Under specified circumstances when Medicare does reimburse for assistant-at-surgery, the reimbursement is not at the full level of that of a physician. The reimbursement rate depends on the level of education. A physician assisting receives 30-75 percent of the surgeons rate, a physician assistant receives about 16-25 percent of the physician fee.<sup>3</sup>

According to the GAO report, there has been a national effort since 1987 to achieve federal reimbursement for Registered Nurse First Assistants (RNFT). At the state level, nine states have state statutes or regulations that support the reimbursement of RNFAs, including Florida,<sup>4</sup> Georgia, Kentucky, Maine, Minnesota, Rhode Island, Texas, Washington, and West Virginia.

## Private Insurance Reimbursement of Surgical Assistants

Generally, insurance plans state that they cover medically necessary services provided by doctors of medicine and osteopathy. Some plans are not specific in terms of listing each type of health care practitioner that may provide services under the plan. Florida statutes require specific services and providers are covered under the health insurance plans issued in Florida. According to a 2001 study conducted by the Florida House of Representatives Insurance Committee, Florida statutes contain 51 mandates on health insurers and HMOs in Florida to ensure coverage of a wide range of medical services and providers,

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 627.419(6), F.S., to include requirements for certified surgical assistants to be reimbursed by insurance policies.

**Section 2.** Provides an effective date of July 1, 2005.

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<sup>2</sup> United States General Accounting Office, January 2004, “Medicare Payment Changes Are Needed for Assistants-at-Surgery.” GAO 04-97.

<sup>3</sup> See The American Academy of Physician Assistants’ web page: [www.aapa.org/gandp/3rdparty.html](http://www.aapa.org/gandp/3rdparty.html).

<sup>4</sup> See ss. 464.027, 409.908, and 627.419, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Office of Insurance Regulation, the bill clarifies that if a policy pays for services of surgical first assistants, then the policy will also cover payments for certified surgical assistants – persons to whom the policy may not have made direct payment under current contracts. It is unclear if the direct payment requirement will significantly affect claims loss, as payments for services provided by certified surgical assistants may be currently covered under the general reimbursement for a covered surgical procedure.

### D. FISCAL COMMENTS:

In 1987, the Legislature required in s. 624.215, F.S., (ch. 87-188) that a “systematic review” of fiscal and social impacts must be reported to AHCA and legislative committees by those proposing mandated insurance health benefits. However, 35 mandates have been approved since that time and most were approved without the cost analysis or review, according to the House Insurance Committees report, 2001.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Office of Insurance Regulation:

- Bill as written would apply to individual and group health insurance policies, except for small group basic and standard policies.
- The bill's provisions do not apply to health maintenance organization contracts.
- The bill does not address policies renewed after the effective date. Therefore, the bill would be prospective to apply only to new policies issued after the effective date.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**